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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS AVALOS VICTORIANO,

Defendant and Appellant.

A143396

(Marin County  
Super. Ct. No. SC187975)

In this appeal, counsel for appellant Victoriano indicates he has reviewed the record in the matter and has decided to file a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. He has advised appellant of this conclusion and indicated to Victoriano that he may decide to submit to this court a written statement of legal issues appellant believes are available here. Thirty days have passed and we have received no supplemental statement from appellant. We therefore have conducted an independent review of the record in this case. We find the appeal appropriate under California Rule of Court, rule 8.304, subdivision (b). We affirm the judgment.

**STATEMENT OF THE CASE**

The District Attorney of Marin County filed a complaint on February 24, 2014, charging appellant with one count of second degree robbery, a violation of Penal Code<sup>1</sup> section 211, and one count of assault with a deadly weapon, a violation of section 245,

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<sup>1</sup> Unless otherwise stated, all statutory references are to the California Penal Code.

subdivision (a)(1). The alleged deadly weapon was a knife. Each count had an allegation of great bodily injury pursuant to section 12022.7, subdivision (a), and each offense was alleged as a strike based on section 1170.12, subdivisions (a), (b), and (c). Each was alleged as a serious and violent felony pursuant to sections 667.5, subdivision (c)(9) and 1192.7, subdivision (c).

On June 4, 2014, appellant eventually entered a guilty plea to count two, a violation of section 245, subdivision (a)(1) and all but one of the enhancements. The prosecution dismissed count one and the great bodily injury allegation.

On October 17, 2014, appellant was sentenced to the aggravated term of four years in state prison. Appellant's appeal contains no certificate of probable cause.

### **STATEMENT OF FACTS<sup>2</sup>**

On February 6, 2014, the police were advised of a stabbing located on Woodland Avenue in San Rafael. The victim was attempting to unlock his front door when appellant approached and demanded his cell phone. When the victim told appellant he had no such item, Victoriano proceeded to stab him two times. Appellant then knocked the victim to the ground and took his wallet, containing \$60. When the victim yelled for assistance, appellant tried to stab him two more times. During this confrontation, the victim detected the odor of alcohol on the person of Victoriano. After the police arrived, they took the victim to the hospital for medical treatment.

On February 22, 2014, the victim saw appellant walking on Woodland Avenue and he alerted the police. Victoriano was then arrested and he confessed to the incident on February 6, 2014. He affirmed he wanted to steal a cell phone. Appellant conceded that he was drinking that day and becomes aggressive when he is in this condition.

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<sup>2</sup> The statement of facts is drawn from the Marin County Probation Department report.

## **ANALYSIS**

In this case, we find the appellant was properly advised of his rights during the change of plea. There is no certificate of probable cause attached to this appeal, and no meritorious issues emerge from a review of the record. The appellant was properly represented by appointed counsel in the proceedings below. We therefore affirm the judgment.

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Dondero, J.

We concur:

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Margulies, Acting P.J.

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Banke, J.

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